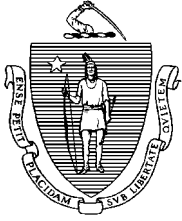


SENATE, NO. 2406

The Commonwealth of Massachusetts



IN THE YEAR OF TWO THOUSAND AND SEVEN

AN ACT FOR A HEALTHY MASSACHUSETTS SAFER ALTERNATIVES TO TOXIC CHEMICALS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 **SECTION 1.** Paragraph (F) of section 4 of chapter 21I of the General Laws, as appearing in the
2 2006 Official Edition, is hereby amended by inserting at the end thereof the following:--
3 “The Advisory Committee shall establish a permanent subcommittee to direct the Advisory
4 Committee on its responsibilities under sections 24 through 35 of this chapter. Members of that
5 subcommittee shall include, but shall not be limited to, 1 person selected from a list of three
6 individuals submitted by the president of the AFL-CIO, 1 person selected from a list of three
7 individuals submitted by the president of the Massachusetts Building Trades Council, 1 person
8 representing the chemistry industry, 1 person representing the medical device industry, 1 person
9 representing businesses in the commonwealth, 1 person representing small businesses in the
10 commonwealth, 1 person representing a statewide environmental organization, 1 person

11 representing a public health organization, 1 person who is skilled and experienced in child
12 health issues, 1 person representing employees of a health and safety organization, 1 person
13 who is skilled and experienced in the area of cancer prevention, 1 person who shall have skill
14 and experience in the field of environmental health policy, 1 person representing a consumer
15 advocacy organization, and 1 person certified as a toxics use reduction planner.”

16 **SECTION 2.** Section 4 of chapter 21I of the General Laws, as appearing in the 2006 Official
17 Edition, is hereby amended by inserting at the end thereof the following subsection:--

18 “(G). The Science Advisory Board shall categorize chemicals according to the provisions of
19 section 24 of this chapter, and shall fulfill the various other duties and responsibilities outlined
20 in sections 24-35, inclusive, for the purposes of the safer alternatives program.”

21 **SECTION 3.** Section 6 of Chapter 21I of the General Laws, as appearing in the 2006 Official
22 Edition, shall be amended by inserting after section 6 the following section:--

23 “Section 6A. TURI and Safer Alternatives.

24 In addition to any other requirements of this chapter, the institute shall seek to reduce the
25 presence of toxic or hazardous substances in products manufactured for use in the
26 Commonwealth by promoting safer alternatives to these priority substances. The institute may
27 develop recognition programs to promote the toxic or hazardous substances reduction
28 achievements of industry and communities. The institute may establish fees, tuitions, or other
29 financial charges for its safer alternatives programs. All monies appropriated to the institute for
30 this purpose, or received for said purposes by the institute through additional grants, gifts,
31 bequests, or contracts shall be administered through the University of Massachusetts Lowell.
32 Wherever feasible, the Institute shall coordinate the programs and responsibilities relative to the

33 substitution of safer alternatives for toxic or hazardous substances with those programs and
34 responsibilities described in the remainder of the chapter.

35

36 Through such programs, the Institute shall:

37 A) Provide general information about toxic or hazardous substances and actively publicize
38 the advantages of and developments in safer alternatives and the requirements of this chapter.

39 This shall include, but not be limited to, providing information about public health,
40 environmental, and economic issues associated with toxics use and toxics use reduction.

41 B) Establish courses, seminars, conferences and other events, and reports, updates, guides
42 and other publications, and other means of providing technical information for consumers, and
43 may as appropriate work in coordination with the office.

44 C) Develop and provide curriculum and training for higher education students and faculty
45 on priority toxic substances and potential safer alternatives.

46 D) Sponsor or engage in research to identify potential priority toxic substances and to
47 identify potential safer alternatives to such hazardous substances.

48 E) Subject to the availability of funding, by July 1, 2009, develop, in consultation with the
49 department, and the office, a safer alternatives curriculum and training program to supplement
50 the Toxics Use Reduction Planner training program. Programs may also be made available at
51 other public and private colleges and universities located in the commonwealth, subject to the
52 approval of the administrative council on toxics use reduction, as described in section 4 of this
53 chapter.

54 F) Sponsor research or pilot projects to develop and demonstrate innovative technologies
55 for implementing safer alternatives to priority toxic substances.

56 G) Provide safer alternative implementation training and assistance to citizens, community
57 groups, non-profit organizations and institutions, workers, labor representatives, businesses,
58 product supply chains, and state and local government boards and officials. The program shall
59 assist these individuals and groups in understanding the public health and environmental
60 impacts of the presence of toxic or hazardous substances, the methods and strategies for
61 substituting safer alternatives for priority toxic substances, and the requirements of this act.”

62 A policy goal of the Commonwealth and its implementing agencies shall be to ensure the
63 substitution in the use, manufacture, emission and distribution of priority toxic substances, and
64 in consumer products containing the substances, with the safest feasible alternatives, in
65 coordination with the environmental and economic agencies of the commonwealth.

66 **SECTION 4.** Section 7 of Chapter 21I of the General Laws, as appearing in the 2006 Official
67 Edition, is hereby amended by inserting, after paragraph “(J)”, the following paragraph:
68 “(K) The office shall develop an Innovative Business Leaders Program according to the
69 description of section 31 of this chapter.”

70 **SECTION 5.** Section 2 of Chapter 21I of the General Laws, as appearing in the 2006 Official
71 Edition, is hereby amended by striking the section in its entirety and inserting in place thereof
72 the following section:-

73 “Section 2. In this chapter, the following words shall have the following meanings, unless
74 specifically stated otherwise:

75 “Administrative Council”, the council created in section 4 of this chapter.

76 “Advisory Committee to the Administrative Council”, the advisory committee to the
77 administrative council created in paragraph (F) of section 4 of this chapter. For the purposes of

78 sections 24 through 35 of this chapter, the term “advisory committee” shall be construed as the
79 sub-committee of the advisory committee created in paragraph (F) of section 4 of this chapter.
80 “Agency”, state agency.

81 “Alternative” means activities, technologies, materials or methods of equivalent function, which
82 can be substituted for the use of a particular chemical.

83 “Board”, the science advisory board of the Toxics Use Reduction Institute at the University of
84 Massachusetts Lowell.

85 “Byproduct” non-product outputs of toxic or hazardous substances generated by a production
86 unit, before handling, transfer, treatment or release. Otherwise used substances shall be counted
87 as byproduct when they leave a production unit.

88 “CERCLA,” the Comprehensive Environmental Response, Compensation and Liability Act, 42
89 U.S.C. S9601 et. seq. (Public Law 92-500).

90 “Chemical” means any element, chemical compound or mixture of elements and/or compounds.

91 “Commissioner”, the commissioner of the department of environmental protection.

92 “Council,” the administrative council on toxics use reduction as established by section four of
93 this chapter.

94 “Department”, the department of environmental protection.

95 “Distributor” means any person or legal entity which distributes products to retail
96 establishments on a wholesale basis, and also includes any legal entity which owns retail
97 establishments and distributes such products to more than five retail establishments of its own
98 within the Commonwealth. Distribution or sales include, but are not limited to, transactions
99 conducted through sales outlets, catalogs or the internet, a product under its own brand or sales
100 of a product by others under their own brand or label.

101 “Emission,” a release of a toxic or hazardous substance to the environment or a transfer of a
102 toxic or hazardous substance in waste to an off-site location.

103 “Environmental management system”, a quality-based management system that effectively
104 integrates environmental considerations into an organization’s day-to-day operations and
105 management culture. The department and the council shall have responsibilities to further define
106 an environmental management system as it relates to this chapter. In order to be eligible to be an
107 alternative to toxic use reduction planning, the environmental management system shall, at a
108 minimum, meet the following criteria: (a) include all production units that use TURA-listed
109 chemicals used in reportable quantities as part of the environmental management system; (b)
110 identify all TURA-listed chemicals used in reportable quantities as significant aspects; (c)
111 consider toxics use reduction when identifying significant aspects and developing associated
112 objectives and targets; (d) emphasize source reduction in achieving objectives; and (e)
113 incorporate appropriate environmental performance metrics when developing objectives and
114 targets.

115 "EOEEA" means the executive office of energy and environmental affairs.

116 “EPCRA,” the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. S11001 et.
117 seq. (Public Law 99-499).

118 “Facility,” all buildings, equipment, structures, and other stationary items which are located on a
119 single site or on contiguous or adjacent sites and which are owned or operated by the same
120 person, or by any person who controls, is controlled by, or is under common control with, such
121 person.

122 "Feasible" means capable of being accomplished within a reasonable period of time with proven
123 technologies.

124 “First List” means the science-based List created and maintained by the Institute according to
125 the provisions of section 24 of this chapter. This List is the categorized list of substances used
126 in Massachusetts products and services.

127 “Further study alternative” means an alternative for which the institute lacks sufficient data to
128 characterize it either as a “safer alternative” or an “unacceptable alternative.”

129 “Higher hazard substance”, a substance designated as a higher hazard substance pursuant to
130 section 9.

131 “Institute”, the Toxics Use Reduction Institute at the University of Massachusetts Lowell.

132 “Intermediate product,” (a) in chemical manufacturing, any chemical substance that is
133 consumed, in whole or in part, in chemical reactions used for the intentional manufacture of
134 another chemical substance or mixture, or that is intentionally present for the purpose of altering
135 the rate of chemical reactions, other than a non-isolated intermediate as defined in this chapter;
136 (b) in any other setting, any manufactured substance, compound, or product that is consumed, in
137 whole or in part, in a chemical or physical process for the intentional manufacture of another
138 product, becomes a component part of another product, or that is intentionally present for the
139 purpose of aiding the manufacture of another product, other than a non-isolated intermediate as
140 defined in this chapter.

141 "Impact on existing jobs" means need for employee retraining to do a different job in the same
142 workplace, changes in job descriptions or tasks, changes in working conditions such as health
143 and safety, or reduction in employee wages or hours occurring in the Commonwealth of
144 Massachusetts.

145 "Job loss" means the loss of employment within the Commonwealth of Massachusetts.

146 "Just and fair transition" means reemployment assistance or vocational retraining or other
147 support or arrangements sufficient to ensure that any employee displaced in the Commonwealth
148 as a result of toxic substance substitution will be eligible for an available job with at least
149 equivalent wages and benefits, skill level, and working conditions.

150 "Large quantity toxic user," any toxics user who manufactures, processes or otherwise uses any
151 toxic or hazardous substance in an amount the same as or greater than the applicable threshold
152 amount in a calendar year at a facility.

153 "Legal entity" means any firm, association, organization, partnership, business, trust,
154 corporation, limited liability company, company, district, county, city, town, and the state, and
155 any of the agencies and political subdivisions of those entities, joint action agencies, public
156 authorities, and, to the extent permitted by federal law, the United States, or any of its agencies
157 or political subdivisions.

158 "Lower hazard substance", a substance designated as a lower hazard substance pursuant to
159 section 9.

160 "Manufacture," to produce, prepare, import or compound a toxic or hazardous substance.
161 Manufacture shall also mean to produce a toxic or hazardous substance coincidentally during
162 the manufacture, processing, use, or disposal of another substance or mixture of substances,
163 including a toxic substance that is separated from that other substance or mixture of substances
164 as a byproduct, and a toxic substance that remains in that other substance or mixture of
165 substances as an impurity.

166 "Manufacturer" shall mean, for sections 24 through 35 of this chapter, any person, firm,
167 association, partnership, corporation, governmental entity, organization, combination or joint
168 venture which is last in the production or assembly process of a new product, or in the case of

169 an imported product, the importer or domestic distributor of the product; provided that, if a
170 company from whom an importer or domestic distributor purchases the merchandise has a U.S.
171 presence or assets, that company shall be considered the manufacturer and the distributor as
172 defined in chapter 93B shall not be considered the manufacturer.

173 "Material substitution" means the direct replacement of one substance for a priority toxic
174 substance in a simple drop-in process, without otherwise changing the formula or process.

175 "Mixture," means any combination of two or more chemicals, if the combination is not, in
176 whole or in part, the result of a chemical reaction. However, if the combination was produced
177 by a chemical reaction but could have been produced without a chemical reaction, it is also
178 treated as a mixture. A mixture also includes any combination which consists of a chemical and
179 associated impurities.

180 "Multi-media," having to do with all environmental media including, but not limited to, water,
181 land and air and workplaces within facilities.

182 "Non-isolated intermediate," any intermediate which is not intentionally removed from the
183 equipment in which it is manufactured, including any reaction vessel in which it is
184 manufactured, equipment which is ancillary to the reaction vessel or similar equipment, and any
185 equipment through which the intermediate passes during a continuous flow process, but not
186 including tanks or other vessels or equipment in which the substance or product is stored after
187 manufacture.

188 "Office", office of technical assistance and technology within the executive office of
189 environmental affairs.

190 "Person," any individual, trust, firm, joint stock company, corporation, partnership, or
191 association engaged in business or in providing service, excluding the Commonwealth of

192 Massachusetts, and any authority, district, municipality or political subdivision of the
193 Commonwealth of Massachusetts.

194 “POTW (publicly-owned treatment works) operators,” holders of discharge permits for any
195 devices and systems owned by the commonwealth or any of its political subdivisions and used
196 in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of
197 a liquid nature to implement 33 U.S.C. S1281, or necessary to recycle or reuse water at the most
198 economical cost under the estimated life of the works, including intercepting sewers, outfall
199 sewers, sewage collection systems, pumping, power, and other equipment, and the
200 appurtenances; extensions, improvements, remodeling, additions, and alterations thereof;
201 elements essential to provide a reliable recycled supply such as standby treatment units and
202 clear well facilities; any works, including the land that will be an integral part of the treatment
203 process (including land used for the storage of treated wastewater in land treatment systems
204 prior to land application) or is used for ultimate disposal of residues resulting from such
205 treatment; any other method or system for preventing, abating, reducing, storing, treating,
206 separating, or disposing of municipal waste, including storm water runoff, or industrial waste,
207 including waste in combined storm water and sanitary sewer systems.

208 "Priority toxic substance" means any substance designated as such by the Administrative
209 Council pursuant to section 26 of this chapter, and recorded in the Second List.

210 “Priority toxic substance use” means any use of a priority toxic substance designated as such by
211 the Administrative Council pursuant to section 26A of this chapter, and recorded in the Third
212 List.

213 “Process,” the preparation of a toxic or hazardous substance, after its manufacture, for
214 distribution in commerce:

215 (a) in the same form or physical state, or in a different form or physical state from, that in which
216 it was received by the toxics user so preparing such substance; or

217 (b) as part of an article containing the toxic or hazardous substance.

218 “Product,” a product, a family of products, an intermediate product, a family of intermediate
219 products, or a desired result or a family of results.

220 “Production unit,” a process, line, method, activity, or technique, or a combination or series
221 thereof, used to produce a product.

222 “Proven technologies”, technologies in use by some users within similar firms in a user sector
223 within or outside of the Commonwealth.

224 “Resource conservation”, an action that decreases the use or consumption of a natural asset such
225 as water, energy, or raw materials, or increases the efficiency of the use of the asset, without
226 increasing the risk to the public, including workers and consumers, or the environment and
227 without increasing the amount of waste generated.

228 “Safer Alternatives Assessment Report”, the alternatives assessment completed for each priority
229 toxic substance by the Toxics Use Reduction Institute; provided that this shall also mean any
230 assessment conducted according to line item 7100-0350 of section 2 of Chapter 45 of the Acts
231 of 2005.

232 “Safer alternative”, an option or options – including a change in chemical, material, product,
233 process, function, system, or any other action – whose adoption to replace a chemical currently
234 in use would be effective in reducing overall potential for harm to human health or the
235 environment.

236 “SIC code,” the identification code assigned to facilities by the United States Department of
237 Commerce.

238 “Second List,” means the list created and maintained by the department according to the
239 provisions of section 26 of this chapter. This List is the record of substances which have been
240 designated as priority toxic substances.

241 “Small quantity toxics user,” any toxics user who is not a large quantity toxics user.

242 “State agency,” any agency or authority of the commonwealth as defined in section one of
243 chapter thirty A of the General Laws.

244 “Substitution”, the replacement or reduction of hazardous substances by selecting less
245 hazardous or non-hazardous substances, or by changing production processes, product function
246 or design.

247 “Third List,” means the list created and maintained by the department according to the
248 provisions of section 26A of this chapter. This list is the record of priority toxic substance uses.

249 “Threshold amounts”, the thresholds for toxics or hazardous substances as established in
250 section 9A.

251 “Toxics user”, a person who owns or operates a facility that manufactures, processes or
252 otherwise uses any toxic or hazardous substance that is classified in SIC Codes 10 to 14,
253 inclusive, 20 to 40, inclusive, 44 to 51, inclusive, 72, 73, 75, 76, 80 or 82, or the corresponding
254 NAICS code.

255 “Toxic,” toxic or hazardous.

256 “Toxic or hazardous substance”, for sections 24 through 35, inclusive, of this chapter, shall
257 mean a substance in a gaseous, liquid, solid or other form which is identified as a substance of
258 concern or high concern according to the First List for the Safer Alternatives Program, but
259 which will not include any substance when it is (1) present in crude, lubricating or fuel oils or
260 other petroleum materials being held for direct wholesale or retail sale; (2) present in crude or

261 fuel oils used in combustion to produce electricity, steam or heat except when production of
262 electricity, steam or heat is the primary business of a facility; or (3) present as a naturally
263 occurring substance in fossil fuels, and in emissions or byproducts as a result of the combustion
264 of fossil fuels.

265 “Toxic or hazardous substance”, for sections 1-23, inclusive, of this chapter, shall mean a
266 substance in a gaseous, liquid, solid or other form which is identified on the toxic or hazardous
267 substance list established pursuant to section 9, but which will not include any substance when
268 it is (1) present in an article; (2) used as a structural component of a facility; (3) present in a
269 product used for routine janitorial or facility grounds maintenance; (4) present in foods, drugs,
270 cosmetics or other personal items used by employees or other persons at a facility; (5) present in
271 a product used for the purpose of maintaining motor vehicles operated by a facility; (6) present
272 in process water or non-contact cooling water as drawn from the environment or from municipal
273 sources, or present in air used either as compressed air or as part of combustion; (7) present in a
274 pesticide or herbicide when used in agricultural applications; (8) present in crude, lubricating or
275 fuel oils or other petroleum materials being held for direct wholesale or retail sale; or (9) present
276 in crude or fuel oils used in combustion to produce electricity, steam or heat except when
277 production of electricity, steam or heat is the primary business of a facility.

278 “Toxic or hazardous substance list,” the list of toxic or hazardous substances established
279 pursuant to section nine of this chapter.

280 “Toxics,” toxic or hazardous substances.

281 “Toxics use reduction,” in-plant changes in production processes or raw materials that reduce,
282 avoid, or eliminate the use of toxic or hazardous substances or generation of hazardous
283 byproducts per unit of product, so as to reduce risks to the health of workers, consumers, or the

284 environment, without shifting risks between workers, consumers, or parts of the environment.

285 Toxics use reduction shall be achieved through any of the following techniques:

286 1. Input substitution, which refers to replacing a toxic or hazardous substance or raw material

287 used in a production unit with a non-toxic or less toxic substance;

288 2. Product reformulation, which refers to substituting for an existing end-product an end-

289 product which is non-toxic or less toxic upon use, release or disposal;

290 3. Production unit redesign or modification, which refers to developing and using production

291 units of a different design than those currently used;

292 4. Production unit modernization, which refers to upgrading or replacing existing production

293 unit equipment and methods with other equipment and methods based on the same production

294 unit;

295 5. Improved operation and maintenance of production unit equipment and methods which refers

296 to modifying or adding to existing equipment or methods including, but not limited to, such

297 techniques as improved housekeeping practices, system adjustments, product and process

298 inspections, or production unit control equipment or methods; or

299 6. Recycling, reuse, or extended use of toxics by using equipment or methods which become an

300 integral part of the production unit of concern, including but not limited to filtration and other

301 closed loop methods.

302 However, toxics use reduction shall not include or in any way be inferred to promote or require

303 incineration, transfer from one medium of release or discharge to other media, off-site or out-of-

304 production unit waste recycling, or methods of end-of-pipe treatment of toxics as waste.

305 “Toxics Use Reduction Institute,” or “Institute,” the Toxics Use Reduction Institute established

306 pursuant to section six of this chapter.

307 “Trade secret,” any formula, plan, pattern, process, production data, device, information, or
308 compilation of information which is used in a toxics user’s business, and which gives said
309 toxics user an opportunity to obtain an advantage over competitors who do not know or use it.
310 “TURA”, the toxics use reduction act.

311 “Unacceptable alternative,” means an alternative which contains, or whose use would result in
312 exposure of humans or the environment to, a chemical of high concern or other chemical used in
313 dangerous and dispersive ways.

314 "Usage" means the presence of a priority toxic substance in manufacturing, products or services
315 delivered or conducted within the Commonwealth.

316 “User segment,” a set of no fewer than five toxics users who employ a similar production unit,
317 as classified by the department pursuant to section three of this chapter.

318 "User sector" means a logical grouping of users of a priority toxic substance within the
319 Commonwealth.”

320 **SECTION 6.** Section 4 of Chapter 21I of the General Laws, as appearing in the 2006 Official
321 Edition, is hereby amended by inserting after paragraph (G) the following new paragraph: -
322 “(H) The Advisory Committee to the council shall participate, from conceptualization and
323 scoping through drafts and finalization, in the development of each of the institute’s Safer
324 Alternatives Assessment Reports, the development of each of EOEEA’s Chemical Action Plans,
325 and the development of implementing policies and regulations by the department. The
326 Advisory Committee’s safer alternative program duties include:

327 1. Reviewing and providing comments to the Institute during the preparation of each Safer
328 Alternatives Assessment Report. The institute shall seek comments from the advisory
329 committee and provide a summary of said comments in each report.

330 2. Reviewing and providing comments to EOEEA during the preparation of each Chemical
331 Action Plan. EOEEA shall seek comment from the advisory committee and include a summary
332 of said comments in each plan.

333 3. Reviewing and making recommendations to EOEEA on the performance of Chemical Action
334 Plans. Every two years EOEEA shall present a review of performance on the implementation of
335 each Chemical Action Plan to the advisory committee and shall seek comment from the
336 advisory committee.”

337 **SECTION 7.** Chapter 21I of the General Laws is hereby amended by inserting at the end
338 thereof the following fourteen sections:

339 “Section 24. First List for the Safer Alternatives Program

340 (A) No later than one year following the receipt of funding, the Institute shall publish the first
341 list for the safer alternatives program. This first list shall be a categorized record of all
342 chemicals commonly used in Massachusetts industry or used in products sold in Massachusetts.
343 This list is a science based list. Therefore the institute shall rely on the Science Advisory Board
344 to categorize chemicals on the list into one of four categories: substances of high concern,
345 substances of concern, substances of unknown concern, and substances of low concern. The
346 institute may create subcategories within those four categories. These categories may be
347 adjusted to take account of additional information, including on emerging materials. In defining
348 the universe of chemicals and preparing this categorization, the Science Advisory Board will
349 rely on published government lists of chemical categorizations including, but not limited to, the
350 Canadian Domestic Substances List Categorization, the European Commission’s list of
351 substances of very high concern, Washington State’s list of persistent, bioaccumulative and
352 toxic chemicals, International Agency for Research on Cancer’s list of carcinogens, the Oslo-

353 Paris Convention for the Protection of the Marine Environment of the North East Atlantic list of
354 chemicals for priority action. The substances of high concern category shall include those
355 chemicals recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized
356 as persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and
357 very bioaccumulative chemicals; endocrine disruptors; and other chemicals of equivalent
358 concern. The Science Advisory Board and the Institute shall also ensure that the First List for
359 the Safer Alternatives Program is consistent with existing categories that have been established
360 for chemicals on the TURA list. If the Science Advisory Board and the Institute identify
361 chemicals that are considered priority chemicals or chemicals of concern on published
362 government lists, and if these chemicals are used in manufacturing but are not on the TURA list,
363 the Institute may recommend these for listing under TURA.

364 (B) Refined First List. Following the publication of the First List for the Safer Alternatives
365 Program, the institute and the Science Advisory Board shall conduct an ongoing review of
366 scientific information regarding substances found on the First List. At periodic points, but at
367 least every 4 years, and within 4 years after publication of the First List, the institute and the
368 Science Advisory Board shall refine the list to incorporate new scientific information and data,
369 and publish a refined version of the list.

370 (C) Prioritized First List for the Safer Alternatives Program.

371 The administrative council, in consultation with the institute and the advisory committee, shall
372 prioritize the chemicals contained within the substances of high concern category, according to
373 criteria which it shall publish and make known to the public. This criteria shall include, but not
374 be limited to, inherent toxicity, use, including uses that expose sensitive populations, the public
375 policy implications of a reduction in its use, and opportunities for substitution. The

376 administrative council shall provide this prioritized list, known as the Prioritized First List for
377 the Safer Alternatives Program, to the institute. The list shall be a matter of public record
378 pursuant to Section 10 of Chapter 66 of the General Laws. The administrative council shall
379 seek comments from the institute as well as the public regarding this prioritization of the list.
380 The administrative council may, in consultation with the institute and the advisory committee,
381 choose to include substances of concern in the Prioritized First List if there are uses for that
382 substance that pose a perceived danger to sensitive populations, particularly in the case of young
383 children.

384 Section 25. Safer Alternatives Assessment Reports.

385 (A) Within 180 days following the publication of the First List, and annually thereafter, the
386 administrative council shall select toxic substances from the Prioritized First List for the Safer
387 Alternatives Program, and direct the Institute to conduct and publish a Safer Alternatives
388 Assessment Report for each substance which evaluates the availability of safer alternatives to
389 these substances.

390 For each Safer Alternatives Assessment Report the institute shall:

- 391 a. Identify the uses and functions of the priority toxic substance and select a subset of uses and
392 functions for further study based on uses in Massachusetts and other relevant factors. Priority
393 shall be given to uses of greatest volume or dispersion into indoor and outdoor environments,
394 high exposure scenarios, or other sources of concern;
- 395 b. Identify whether alternatives are available for the selected uses and functions of the priority
396 toxic substance;
- 397 c. Identify whether any of the existing uses of the substance are of a trivial, clearly unnecessary
398 nature;

399 d. Use the Prioritized First List for the Safer Alternatives Program in Section 24 and other
400 relevant factors to characterize feasible alternatives as one of the following mutually exclusive
401 categories: unacceptable alternatives, further study alternatives, or safer alternatives. The
402 institute and the Science Advisory Board may develop subcategories within these categories;

403 e. Provide a qualitative discussion of the economic feasibility, opportunities, or costs associated
404 with adopting and implementing any safer alternatives. This assessment may include a
405 qualitative characterization of the economic impacts of substitution on the Massachusetts
406 economy, including any impacts on the workforce or quality of work life, potential costs or
407 benefits to existing business, potential impact on the cost of providing health care if the product
408 is a medical product, and the extent of human exposure to the priority toxic substance that could
409 be eliminated through substitution;

410 f. Each assessment shall also identify uses of chemicals that do not currently have a feasible
411 safer alternative available, and make recommendations for promoting research and development
412 of such alternatives.

413 (B) The Institute shall work with the Science Advisory Board to develop criteria for
414 determining what alternatives are unacceptable alternatives, further study alternatives, or safer
415 alternatives for priority toxic substances. The Institute and the Science Advisory Board may
416 also develop criteria for subcategories within these categories.

417 (C) The Institute shall seek comment from affected businesses, affected workers, the Board, the
418 Advisory Committee to the Administrative Council and members of the public in developing
419 each Safer Alternatives Assessment Report. The Institute shall convene seminars and public
420 meetings, and solicit comments through the internet and other means to inform the development
421 of the Safer Alternatives Assessment Reports.

422 (D) The Institute shall publish and make available to the EOEEA, the department and the
423 general public the results of the Safer Alternatives Assessment Report for substance assessed
424 and compile a general list of alternatives deemed as unacceptable, further study, or safer for all
425 of the priority toxic substances.

426 (E) In the event that one of the substances assessed is a pesticide, the Institute shall contract
427 with resources at the University of Massachusetts Amherst, including the Cooperative
428 Extension Service, for assistance and guidance in the completion of the agricultural uses portion
429 of the safer alternatives assessment.

430 (F) In the event that one of the substance uses assessed is meant for a medical purpose, the
431 Institute shall contract with resources at the University of Massachusetts Worcester for
432 assistance in the preparation and completion of the report.

433 (G) Following completion of a Safer Alternatives Assessment Report, the institute shall consult
434 with stakeholders and policymakers and review the provisions of the report on a periodic basis,
435 but at least once every five years.

436 (H) The administrative council shall consult with the advisory committee and the institute, and
437 recommend annually the number of safer alternatives assessment reports to be published. This
438 recommendation shall be made on the basis of available funds, available institute resources, and
439 the anticipated public policy implications of report publication. Provided, however, that the
440 administrative council shall annually recommend a minimum of three substances for assessment
441 review by the institute.

442 (I) The administrative council shall annually, no later than December 31st of every year, submit
443 a report to the house and senate committees on ways and means, the joint committee on
444 environment, natural resources, and agriculture, and the joint committee on public health, that

445 details the reasoning behind the recommendation of clause (H). The report shall discuss the
446 availability of funds and resources, as well as public policy considerations. This report shall be
447 a public record under section 10 of Chapter 66 of the general laws.

448 Section 26. Second List for the Safer Alternatives Program

449 The department shall, on behalf of the Administrative Council, create and maintain a document
450 which shall be known as the Second List for the Safer Alternatives Program.

451 Within thirty days of the completion of a Safer Alternatives Assessment Report, the
452 Administrative Council shall designate assessed substances as priority toxic substances if this is
453 in accordance with the results of the assessment, and shall recommend the addition of the
454 substances so designated to the Second List for the Safer Alternatives Program. Whether or not
455 a Safer Alternative Assessment Report has been completed, the Administrative Council may
456 add substances to the Second List, provided they are chemicals that are persistent, bio-
457 accumulative and toxic; are other chemicals of high concern; or are chemicals of concern that
458 are widely used within Massachusetts.

459 In addition, the Administrative Council shall add the substances studied in the assessment
460 published by the Institute and conducted according to line item 7100-0350 of section 2 of
461 chapter 45 of the acts of 2005 to the Second List for the Safer Alternatives Program. These
462 substances shall be designated by the Council as priority toxic substances. Within 60 days of
463 the addition of a substance studied according to said item 7100-0350 to the Second List for the
464 Safer Alternatives Program, the Administrative Council shall designate priority substance uses
465 and proceed with the development of Chemical Action Plans for these substances. The
466 Administrative Council shall consult with the Advisory Committee to the Administrative
467 Council on these issues.

468

469 Any group of ten residents of the Commonwealth may petition the Administrative Council to
470 add new substances to the Second List for the Safer Alternatives Program. A copy of the
471 petition shall be provided by the petitioners to the Institute and the Science Advisory Board.
472 The Institute and the Science Advisory board may provide an opinion on the substance of the
473 petition to the administrative council within 90 days of its receipt by said council. Petitioned
474 substances may be added to the list by the Administrative Council provided that they are found
475 to merit high priority status based on the criteria for high concern chemicals described in section
476 26 of this chapter. If a petitioned substance is a substance of concern, and is perceived to pose a
477 significant danger to sensitive populations such as young children, the Administrative Council
478 may add the substance to the list. Such a petition shall include the name and address of each
479 petitioner, a statement of the basis for believing that the named substance should be added to the
480 Second List for the Safer Alternatives Program, a statement describing in detail the particular
481 uses of the chemical which are of concern to the petitioners, and such other information or
482 documentation as the petitioner chooses to include.

483 The Advisory Committee to the Administrative Council, upon agreement via majority vote, may
484 petition the Administrative Council to add new substances to the Second List for the Safer
485 Alternatives Program, provided that substances which do not merit high priority based on the
486 criteria for substances of high concern, as developed according to section 24 of this chapter, and
487 are not perceived to pose a significant danger to sensitive populations such as young children,
488 may not be added in this manner.

489 Substances added to the Second List through the mechanisms described in this section shall be
490 considered priority toxic substances, and designated as such by the Administrative Council.

491 Section 26A. Third List for the Safer Alternatives Program.

492 The department, on behalf of the Administrative Council, shall create and maintain the Third

493 List for the Safer Alternatives Program. The Third List for the Safer Alternatives Program shall

494 be a matter of public record according to section 10 of chapter 66. The department, in

495 consultation with the Toxics Use Reduction Institute, shall publicly advertise the contents of the

496 list, and maintain a publicly available website detailing the substance uses on the list. The Third

497 List shall record priority toxic substance uses.

498 The Administrative Council, in consultation with the Advisory Committee, shall, following the

499 addition of a substance to the Second List for the Safer Alternatives Program, and within 90

500 days, identify uses of those substances which are of highest concern, designate these uses as

501 priority toxic substance uses, and transmit these designations to the department. The

502 department shall add these uses to the Third List for the Safer Alternatives Program. This

503 designation by the Council shall be based upon the practical implications of so designating a

504 substance use as well as the inherent toxicity of the substance, the quantity and variety of its

505 use, including uses that expose sensitive populations, and safety exhibited by the use. The

506 administrative council shall, in this designation, pay particular attention to public health and

507 safety dangers posed to children and infants by the use, and may employ the age of the end user

508 as a means to demarcate similar uses.

509 The department shall consult with the institute and with the advisory council to the

510 administrative council to determine additional means and methods by which the Third List for

511 the Safer Alternatives Program may be best disseminated to the public, and this list shall be a

512 public record pursuant to section 10 of chapter 66.

513 Section 27. Registry of Uses of Priority Toxic Substances.

514 (A) Notices. No later than 120 days following the designation of a priority toxic substance use,
515 any person or legal entity that manufactures or distributes a product in the Commonwealth
516 which the manufacturer knows or has reason to suspect contains a substance usage described in
517 the Third List for the Safer Alternatives Program shall file a notice with the department
518 identifying the product, the approximate number of units distributed in the Commonwealth, an
519 estimate of the amount or concentration of the priority toxic substance contained in each unit, if
520 known, the purpose for including the priority toxic substance in the product, the name and
521 address of the manufacturer, and the name, address, and phone number of a contact person. The
522 department shall prescribe a notification form for such notices to be filed, and a means of filing
523 such notices electronically.

524 (B) Distribution of information. The notices shall be provided by the department to the institute
525 for use in preparing its Safer Alternatives Assessment Reports, and shall be a public record
526 pursuant to section 10 of chapter 66 of the General Laws. Public disclosure of confidential
527 business information submitted to the department pursuant to this section shall be governed by
528 the requirements of section 10 of chapter 66 of the general laws. Notwithstanding the
529 requirements of said act, the state may provide the copies of such information, and the
530 department may compile or publish analyses or summaries of such information provided that
531 the analyses or summaries do not identify any manufacturer or reveal any confidential business
532 information. Information may be considered confidential business information if it meets the
533 criteria for Trade Secret Protection described in Section 20 of Chapter 21I.

534 (C) Preemption. Any product containing a priority toxic substance for which federal law
535 governs notice in a manner that preempts state authority shall be exempt from the requirements
536 of this section.

537 (D) With the approval of the department, a manufacturer, distributor or trade group may supply
538 the information required above for a product category rather than an individual product. The
539 submitter shall update and revise the information in the notification whenever there is a
540 significant change in the information or when requested by the department. The department
541 may promulgate regulations pursuant to chapter 30A of the general laws for the content and
542 submission of the required notification.

543 Section 28. State Chemical Action Plans.

544 (A) No later than one year after the Administrative Council identifies a new priority toxic
545 substance use, EOEEA shall utilize the Safer Alternatives Assessment report to establish a
546 Chemical Action Plan for that substance use. The goal of the Chemical Action Plan shall be to
547 coordinate state agency activities and to require users of priority toxic substance uses to act as
548 expeditiously as possible to ensure substitution of the priority toxic substance with a safer
549 alternative, while acting to minimize job loss and mitigate any other potential unintended
550 negative impacts. In preparing the Chemical Action Plan, EOEEA shall consider the potential
551 impacts to human health and the environment of the continued use of the priority toxic
552 substance.

553 (B) Each Chemical Action Plan shall set forth:

- 554 1) Timetables, schedules and deadlines for achieving substitution of priority toxic substances
555 with safer alternatives, for specified uses;
- 556 2) Requirements for all manufacturers of products containing the priority toxic substance in
557 Massachusetts to create a Substitution Plan which demonstrates how that entity will substitute
558 all uses of the chemical with safer alternatives. Firms required to prepare Toxics Use Reduction
559 Plans shall include the Substitution Plan in their Toxics Use Reduction Plan.

560 A Substitution Plan shall include:

- 561 a) identification of all uses of a priority toxic substance for specified uses,
- 562 b) identification of all alternatives considered, including cost and feasibility considerations,
- 563 c) selection of preferred alternatives that will achieve the objectives and schedules set out in the
- 564 relevant Chemical Action Plan,
- 565 d) timetables, schedules and deadlines for implementing the preferred alternatives,
- 566 e) metrics for assuring the full substitution of the priority toxic substance.

567 Each completed Substitution Plan must be certified by a Toxics Use Reduction Planner, as
568 defined in Section 12 of Chapter 21I, as complete and reasonable and capable of meeting the
569 objectives and schedules of the relevant Chemical Action Plan.

570 3) Priorities for state agency action based on the Safer Alternatives Assessment Report.

571 4) Specific tasks assigned to the department relative to regulation deadlines and enforcement
572 regarding business and institutional use of toxic chemicals in facilities, and regarding regulation
573 of consumer products containing the priority toxic substances.

574 5) A set of implementation measures based on the following criteria:

575 a) If the Safer Alternatives Assessment Report indicates that safer alternatives are feasible and
576 of comparable cost, the department shall be required to set and enforce regulations requiring the
577 substitution to a safer alternative. If the department determines the implementation of the
578 chemical action plan for the substitution of a substance use will take longer than 5 years, the
579 department may require the clear labeling of products to identify the toxic substance present in
580 the product, and the impact of the toxic substance on the public health. The department may
581 exempt from labeling those products which are too small to be labeled or on which a label
582 would not be visible in the final product.

583 b) If the Safer Alternatives Assessment Report finds that safer alternatives are feasible, but
584 require extensive capital expenditure or training, EOEEA shall implement a business assistance
585 or employee transition program, as set forth in section 30 of this chapter. EOEEA will set a
586 timetable for completing substitutions as expeditiously as possible.

587 c) If the Safer Alternatives Assessment Report determines that safer alternatives are not
588 feasible, the Chemical Action Plan shall designate research and development activities to be
589 pursued, including a priority of encouraging and supporting research by private entities and
590 academic institutions;.

591 6) Recommendations on opportunities and needs for investment in Massachusetts businesses
592 and research and development institutions to promote the implementation of safer alternatives to
593 toxic chemicals that could bring the most benefit to the Massachusetts economy through safe
594 jobs and economic growth.

595 (C) After EOEEA has established a Chemical Action Plan, all other state agencies shall take any
596 required implementing actions as set forth in the Chemicals Action Plan and this chapter.

597 (D) In preparing each Chemical Action Plan, EOEEA shall hold public hearings in each of the
598 five regions of the state to receive feedback on the contents of the plan.

599 (E) In preparing each Chemical Action Plan, EOEEA shall require the Department to release an
600 estimated timetable for the substitution of a substance for the substance use.

601 Section 29. Innovative Business Leaders Program.

602 The Office of Technical Assistance, in consultation with the implementing agencies, shall create
603 a program to encourage rapid substitution of priority toxic substances, called the “Innovative
604 Business Leaders Program”. This program shall encourage users of priority toxic substances or
605 chemicals of high concern to complete Substitution Plans prior to completion of Safer

606 Alternatives Assessment Reports, as defined in section 25 of this chapter, or Chemical Action
607 Plans, as defined in section 28 of this chapter. Those entities participating in the Innovative
608 Business Leaders Program shall submit the results of Substitution Plans to the department. This
609 program may include priority targeted financial and technical assistance and support for
610 research, information gathering, and implementation. EOEEA shall develop criteria for firms
611 that participate in said program.

612 Section 29A. Certain functions provided for in sections 25, 26, 27, and 29 may be transferred to,
613 or carried out in cooperation with, an interstate entity. Such interstate entity may, among other
614 functions: compile and categorize chemical lists; produce alternatives assessment reports;
615 develop model Chemical Action Plans; and house one or more product or chemical use
616 registries.

617 Section 30. Business and Employee Transitions Programs.

618 Business Transitions Assistance Program.

619 The Executive Office of Energy and Environmental Affairs shall, in consultation with the
620 Executive Office of Housing and Economic Development, work with the institute and the office
621 to oversee a Business Transitions Assistance Program (BTAP) facilitating business transitions
622 to safer alternatives to toxic chemicals in the Commonwealth. In developing the program, the
623 EOEEA shall determine where business assistance and financial investment can be most
624 effectively used to protect public health by focusing on application and promotion of safer
625 alternatives.

626 The office of technical assistance shall provide technical assistance to businesses for
627 developing and implementing safer alternatives consistent with section seven of this chapter.

628 The Business Transition Assistance Program shall be principally operated through private
629 consortia, public-private partnerships, and state universities.

630 The Business Transitions Assistance Program shall include:

- 631 1. programs to evaluate technologies, encourage university researchers to pursue projects, link
632 researchers with industry partners, and attract funding and additional support through federal
633 and private grant and financial assistance resources;
- 634 2. direct grants and loans to businesses for costs required to implement safer alternatives
- 635 3. technical support focused on individual companies or user sectors;
- 636 4. technical assistance in assessing safer alternatives and assistance with forming consortiums
637 to assess and develop safer alternatives
- 638 5. research and development of safer alternatives, including demonstration projects;
- 639 6. market development programs to create demand for safer alternatives;
- 640 7. conferences, seminars, and workshops focused on joint problem solving and evaluation of
641 technology development opportunities for particular user sectors;
- 642 8. publications focused on particular user sectors.

643 The Business Transition Assistance Program shall be developed with assistance from and
644 collaboration with the department of labor and industries, department of economic development,
645 the office of technical assistance of the executive office of environmental affairs, department of
646 labor and workforce development, and other agencies.

647 (B) Employee Transitions. The department of labor and workforce development shall cooperate
648 with the EOEEA and the department in developing the employee transition assistance programs.
649 These agencies shall jointly develop a plan to provide that in the event that substantial job losses
650 are anticipated as a result of implementation, just and fair transition services shall ensure

651 reemployment assistance or vocational retraining or other support or arrangements sufficient to
652 ensure that any employee displaced in the Commonwealth as a result of toxic substance
653 substitution will be eligible for an available job with at least equivalent wages and benefits, and
654 working conditions.

655 In the event that any employee is terminated after the enactment of this law, through no fault of
656 his own, as a result of the transition from priority toxics, and is otherwise eligible for
657 unemployment benefits, he or she shall receive reemployment assistance benefits and health
658 insurance benefits through the department of labor and workforce development. Such benefits
659 shall be in addition to any benefits any employee may receive pursuant to the provisions of an
660 agreement resulting from collective bargaining.

661 In the event there is projected to be significant job loss in the Commonwealth as a result of the
662 shift to safer alternatives, the department of labor and workforce development shall establish
663 requirements to ensure a just and fair transition of any affected workers. In the event there
664 would be other substantial impacts on existing jobs, transition plans should also address these
665 issues.

666 Section 31. Implementation –Manufacturers and Users of Priority Toxic Substances.

667 (A) In conformance with the Chemical Action Plan, the department is authorized to promulgate
668 regulations to restrict the use of priority toxic substances for specified uses in the
669 Commonwealth. Such regulations may establish substitution deadlines and substitution planning
670 requirements for business or institutional uses for each priority toxic substance. The regulations
671 shall specify enforcement mechanisms. The department may choose to adopt a set of stricter
672 regulations regarding the use of priority toxic substances in products intended for use by

673 children. The department shall set, within 3 months of the Chemical Action Plan, a clear
674 deadline by which time the substitution shall have been completed.

675 (B) No later than 365 days after the release of the chemical action plan, each regulated entity
676 shall:

677 1) Have completed a substitution plan as defined in Section 29; and

678 2) File with the department a certification of compliance that good faith efforts to implement
679 substitution of a safer alternative as designated by a Safer Alternatives Assessment Report have
680 been implemented, including identification of the name of the alternative, and documentation of
681 employee participation consistent with this section; or

682 3) File an application with the department to use an alternative substance that has neither been
683 designated by the institute as a safer alternative, nor designated unacceptable, documenting that
684 the alternative does not involve chemicals of high concern, and documenting with toxicity and
685 exposure data how the substance would comply with the safer alternatives criteria developed by
686 the institute. In response to such request the department shall evaluate whether such alternative
687 is acceptable; or

688 4) File with the department an application for a waiver of the substitution deadline, certifying
689 that there is no safer alternative that is technically or economically feasible for their particular
690 use of the substance. Such waiver applications shall include:

691 a) identification of all uses of a priority toxic substance,

692 b) identification of all alternatives considered and their cost and feasibility considerations,

693 c) the basis for finding that there is no feasible safer alternative

694 d) documentation of efforts to be taken to minimize the use of the priority toxic substance and
695 human and environmental exposures to such substance until safer alternatives are found and
696 implemented,

697 e) the steps the applicant will take to identify safer alternatives in the coming year.

698 The department shall reject or accept such waiver application within 60 days of receipt of an
699 application, and may grant the waiver where the department finds there is a need for the use of
700 the substance, there was no safer alternative, and the use of the product would not cause human
701 exposure or environmental contamination. Waivers are time limited to one year, after which
702 time a new waiver application must be submitted.

703 (C) All regulated entities evaluating the substitution of safer alternatives shall undertake
704 measures to involve employees. At a minimum, each firm shall provide employees a thirty-day
705 period to provide comments. The firm shall maintain documentation of its employee input and
706 how it is utilized, shall solicit employee comments regarding the use of alternatives, allow for
707 anonymous employee comments, and ensure an analysis of the impact the substitution may have
708 on all aspects of the quality of work life.

709 (D) The department and the institute shall cooperate in revising training requirements for toxics
710 use reduction planners to ensure that the planners are prepared to assist in fulfilling the
711 substitution planning requirements of this section. In addition, the department and institute may
712 develop an additional curriculum to enable toxics use reduction planners to aid manufacturers
713 and distributors in fulfilling the requirements of section 31 of this act.

714 (E) The department shall publish a set of lists, for use by retailers and members of the public,
715 of:

716 (1) all products that have been certified by manufacturers or distributors as containing only
717 those chemicals identified in an Safer Alternatives Assessment Report as safer alternatives, (2)
718 all products that are being sold under a valid waiver, and
719 (3) products that should have a proper label identifying the use of a priority toxic substance.

720 (F) The requirements of this section shall apply to manufacturers and distributors that sell or
721 distribute products to persons or legal entities in the Commonwealth, regardless of whether such
722 manufacturers or distributors are physically located in the Commonwealth.

723 (G) Within the time of the deadline set by the Department, the regulated entity shall certify that
724 substitution of the substance has been completed.

725 Section 32. General requirements and authorities.

726 (A) Businesses and legal entities of any size may develop collaborative submissions to meet any
727 of the certification or waiver application requirements of sections 30 and 31 of this chapter. The
728 executive office of environmental affairs shall assist in facilitating the formation and
729 collaboration of groups of businesses in fulfilling the filing and documentation requirements.

730 (B) Certifications pursuant to section 30 and 31 shall be by independent laboratories known to
731 and approved by the department.

732 (C) The department shall have all of the powers and authorities necessary to prohibit or limit the
733 use, sale or distribution of a product containing a priority toxic substance in the Commonwealth.

734 (D) A manufacturer shall have a duty to take back from retailers and compensate them for the
735 full price paid, for any products sold after the effective date of substance use-specific
736 regulations of the department, for products requiring proper labeling and for which no waiver
737 has been obtained for continued distribution of the product if the product does not contain the
738 proper label.

739 (E) Technical Assistance. The Institute shall work with the Office of Technical Assistance to
740 develop an innovative business leaders program to encourage rapid substitution of priority
741 toxics.

742 Section 33. Enforcement and Appeals

743 (A) Penalties for Noncompliance. Except as otherwise provided in paragraph B of this section,
744 violations of sections 24 to 31 of this chapter by any person or legal entity, shall subject the
745 violator to penalties of up to \$25,000 per day of violation. In addition, the department shall have
746 the authority to exclude products from the state when a distributor or manufacturer has failed to
747 comply with the provisions of this Act.

748 (B) Exemptions for end users of consumer products. End users of consumer products shall not
749 be subject to enforcement action under paragraph (a) of this section.

750 (C) Petition for Appeal. No later than 60 days following the publication of a final Chemical
751 Action Plan by the EOEEA, any ten residents of the Commonwealth may file a petition of
752 appeal of any provisions of the plan with the Secretary of Environmental Affairs. Such a
753 petition may be filed if the petitioners assert that the plan mischaracterizes uses of the priority
754 toxic substance; fails to include feasible alternatives, or mischaracterizes alternatives; fails to
755 result in substitution of the safest available alternatives as expeditiously as possible; fails to
756 adequately address job loss or impacts on existing jobs; or otherwise fails to meet the criteria of
757 this act. A petition of appeal shall state the grounds of objection. The EOEEA shall have 60
758 days from the date of filing to reply with its determination to (a) deny the appeal, or (b) grant
759 the appeal and revise the plan.

760 (D) Citizen enforcement.

761 1) The superior court shall have jurisdiction to enforce the requirements of this chapter in an
762 action brought by any ten residents of the Commonwealth against:

763 (i) any manufacturer, user or distributor alleged to have been be in violation of such
764 requirements; or

765 (ii) an official of the Commonwealth when there is alleged a failure of that official to perform
766 any act or duty under this chapter which is not discretionary with that official.

767 2) No action may be commenced under this section against any manufacturer, user or distributor
768 alleged to have been in violation of the requirements of this chapter prior to twenty one days
769 after the date on which the plaintiff gives notice of the alleged violation to the department and
770 the alleged violator. No action may be commenced under this subsection against any
771 manufacturer, user or distributor alleged to have been in violation of such requirements if the
772 department has commenced and is diligently pursuing an administrative order or civil action to
773 enforce the requirement concerned and to impose a civil penalty under this chapter with respect
774 to the violation of such requirement. No action may be commenced under this subsection
775 against an official of the Commonwealth prior to twenty-one days after the date on which the
776 plaintiff gives notice to said official that the plaintiff will commence the action. Notice under
777 this subsection shall be given in a manner as the department shall prescribe by regulation.

778 3) The court, in issuing any final order for civil penalties or injunctive relief in any action
779 brought pursuant to this subsection, may award costs of litigation, including reasonable attorney
780 and expert witness fees, to the prevailing or substantially prevailing party other than the
781 Commonwealth who advances the purposes of this chapter.

782 (E) In an action for judicial review, or review of a departmental decision by an administrative
783 law judge, the court shall overturn a decision of the department which is contrary to the

784 recommendations of the Assessment Report unless it finds based on clear and compelling
785 evidence that the findings or recommendations of the Report were in error.

786 Nothing in this section shall restrict or expand any right that anyone may have under any other
787 federal or state statute or common law to seek enforcement of any requirement or to seek any
788 other relief.

789 Section 34. Scope of Law and Relationship to Existing Law.

790 (A) Relationship to Federal Law. Nothing in this Act shall be construed to require actions which
791 are preempted by federal law. No provision of this Act shall be construed to require the
792 adoption of Occupational Safety and Health standards or the issuance of orders on any
793 Occupational Safety and Health matter on which the federal Occupational Safety and Health
794 Administration has established a standard.

795 (B) Relationship to Existing laws. Existing environmental, land use, public health and
796 conservation laws and regulations of the Commonwealth shall be interpreted and enforced
797 consistent with this Act. Nothing in this Act shall be interpreted so as to contravene federal law,
798 or the Constitutions of the Commonwealth or of the United States. Nothing in this act shall be
799 construed to convey rights to discharge priority toxic substances into the environment, to cause
800 potential harm to individuals or the environment, or to create a nuisance. Nothing in this Act
801 shall be construed to limit the ability of local government to restrict or prohibit the use or
802 discharge of toxic substances.

803 (C) Severability. The provisions of this Act shall be severable. In the event that any provision
804 of this Act is invalidated by a court of competent jurisdiction, the remaining provisions shall
805 remain in full force and effect.

806 Section 35. Technical Assistance Grants.

807 For purposes of ensuring public involvement regarding the provisions of sections 24 through 35
808 of this chapter, the department shall establish technical assistance grants to organizations of
809 consumers and/or workers focused on the impact of changes in specific sectors. Such grants
810 shall assist in meeting the following needs:

811 1) securing full information on technologies and their impacts on workers, consumers and the
812 environment;

813 2) hiring independent technical support regarding technologies, processes, and work
814 organization; and;

815 3) paying for training programs to assist affected groups in analyzing the changes.

816 **SECTION 8.** Section 12 of Chapter 21I of the General Laws, as appearing in the 2006 Official
817 Edition, is hereby amended by inserting at the end thereof the following:--

818 “(G) The department, through consultation with the advisory committee and with the office,
819 shall amend its regulations relative to this section in order to incorporate the provisions of
820 sections 24 through 35 of this chapter, namely, the creation of the safer alternatives program.”

821 **SECTION 9.** The department of environmental protection shall, in consultation with the
822 executive office of administration and finance, revise its existing fee structure under the Toxics
823 Use Reduction Act to encompass, in addition to current filers, the wholesale sellers or
824 distributors of products or services to retail establishments in the Commonwealth where such
825 products or services utilize or contain priority toxic substances, regardless of whether such
826 wholesale sellers or distributors are located within or outside of the Commonwealth. Where
827 retail establishments buy products directly from manufacturers, the fee shall be assessed on the
828 manufacturer. The fee shall be set at a level sufficient to raise \$18 million per year. 75% of the
829 fee shall be collected from larger distributors and 25% from smaller distributors, based on

830 criteria the department shall establish. In addition the department shall establish a de minimis
831 threshold for products, services and toxic substances below which no fee shall be assessed.
832 Amounts collected by the department according to this section shall be credited to the fund
833 governed by Section 2000 of Chapter 29 of the General Laws.

834 **SECTION 10.** Chapter 29 of the General Laws is amended by adding the following section:--

835 “Section 2000. There shall be established and set up upon the books of the commonwealth, a
836 separate fund to be known as the Innovation for Safer Alternatives Fund. There shall be credited
837 to such fund any amounts collected by the department as fees or penalties pursuant to chapter
838 21I; any appropriation, grant, gift, or other contribution explicitly made to such fund; and any
839 interest earned on monies within the fund. Amounts credited to such fund shall be used, subject
840 to appropriation, solely for the purposes of carrying out chapter 21I including the Act for a
841 Healthy Massachusetts: Safe Alternatives to Toxic Chemicals. Such funds shall be divided with
842 at least six million dollars per year for the executive office of environmental affairs and its
843 office of toxics use reduction assistance and technology; six million dollars per year for the
844 Toxics Use Reduction Institute; a portion of which shall be earmarked for the University of
845 Massachusetts-Worcester and for the University of Massachusetts-Amherst, apportioned
846 commensurate to their involvement in assessment reports and toxics research; two million
847 dollars per year for the department of environmental protection; and four million dollars for the
848 business transitions assistance program and the employee transition assistance program
849 established by MGL chapter 21I section 28. EOEEA shall annually file a report with the house
850 and senate committees on ways and means detailing the manner of expenditure of
851 appropriations from the fund in the preceding fiscal year.”